

EXECUTION COPY

PHASE V PENDLETON DESIGN/BUILD AGREEMENT

By and Between

Camp Pendleton & Quantico Housing, LLC

and

Hunt Pendleton Design/Builders, LLC, as Design/Builder

Dated as of October 1, 2007

TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS	1
ARTICLE 1 DEFINITIONS	1
ARTICLE 2 SCOPE OF WORK	9
2.1 Performance of Work	9
2.2 Professional Standard	10
2.2.1 Standards of Performance	10
2.3 Use of Design Materials	11
2.3.1 Use of Design Materials.....	11
2.4 Local Conditions; Environmental Site Conditions.	11
2.4.1 Local Conditions.....	11
2.4.2 Hazardous Materials	11
2.4.3 Below Grade Utilities	12
2.5 Scope of Work Submittal Documents and Construction Documents	12
2.5.1 General	12
2.5.2 Reliance on Approvals	13
2.5.3 Review of Contract Documents and Field Conditions	13
2.6 Legal Requirements	13
2.6.1 Compliance; Notices; Permits.....	13
2.7 Services and Facilities	13
2.7.1 General	14
2.7.2 Supervision	14
2.7.3 Coordination	14
2.7.4 Cooperation.....	14
2.7.5 Management.....	14
2.7.6 Reports	14
2.8 Warranties	15
2.8.1 Construction Warranty.....	15
2.8.2 Intentionally Deleted.....	15
2.8.3 Landscaping Warranty	15
2.8.4 Application of Warranties.....	15
2.8.5 No Limitation.....	16
2.8.6 Third Party Items	16
2.8.7 Intentionally Deleted.....	16
2.8.8 Failure to Correct Work	16
2.8.9 Acceptance of Nonconforming Work.....	17
2.8.10 Removal of Work.....	17
2.8.11 Damaged or Destroyed Work	17
2.9 Taxes	17
2.10 Access by Company or United States Member	18
2.11 Use of Sites	18
2.12 Patents, Trademarks, Copyrights	18

2.13	Rubbish; Debris; Cleanup.....	18
2.14	Permits, Fees and Notices.....	19
2.15	Shop Drawings, Product Data and Samples.....	19
2.15.1	Documents and Samples at the Sites	19
2.15.2	Shop Drawings, Product Data and Samples	19
2.15.3	Responsibility	20
2.16	Tests and Inspections.....	20
2.16.1	Initial Tests and Inspections.....	20
2.16.2	Additional Tests and Inspections	20
2.16.3	Required Certificates	21
2.16.4	Timing of Testing and Inspections	21
2.17	Execution, Correlation and Intent.....	21
2.17.1	Execution of Agreement	21
2.17.2	Intent of Contract Documents.....	21
2.17.3	Organization of Materials	21
2.17.4	Meaning of Words	21
2.18	Labor and Materials; Liens	21
2.19	Cutting and Patching.....	22
2.19.1	Cutting and Patching of the Work	22
2.19.2	Damage to Work of the Company or Separate Contractors	22
2.20	Uncovering of Construction Work.....	22
2.20.1	Uncovering.....	22
2.20.2	Covering of Work Requested to be Observed	22
ARTICLE 3	COMPANY'S DUTIES AND RESPONSIBILITIES.....	23
3.1	Information and Services Required of the Company.....	23
3.1.1	Company Designation of Authorized Representative.....	23
3.1.2	Communication.....	23
3.1.3	Consent and Approval.....	23
3.1.4	Governmental Approvals	23
3.1.5	Financial Information.....	24
3.2	Activities on the Sites by Company or Separate Contractors.....	24
3.2.1	Company's Right to Award Separate Contracts.....	24
3.2.2	Integration of the Work with Separate Contractors	24
3.2.3	Coordination	24
3.2.4	Use of Sites	24
3.2.5	Deficiency in Work of Separate Contractors	25
3.2.6	Claims Involving Separate Contractors	25
3.2.7	Damage or Injury by Separate Contractors.....	25
3.3	Assignment of Separate Contracts	25
3.4	Company's Right to Stop the Work.....	26
3.5	Company's Right to Carry out the Work.....	26
ARTICLE 4	TIME.....	27
4.1	Progress and Completion	27
4.2	Schedule Obligations	27
4.2.1	Contract Schedule	27

4.2.2	Prosecution of the Work	27
4.3	Preconstruction Activities	27
4.4	Construction Activities	27
4.5	Intentionally Deleted.....	28
4.6	Delays	28
4.6.1	Excusable Delays	28
4.6.2	Schedule Amendment Due to Excusable Delays.....	28
4.6.3	Decision by Company.....	29
4.6.4	Liquidated Damages	29
4.7	Adjustment in GMP on Account of Extensions of Time	29
4.7.1	Payment for Excusable Delays	29
4.7.2	Concurrent Delays	29
4.8	No Damages on Account of Delay.....	30
ARTICLE 5	PAYMENT AND COMPLETION; SAVINGS	30
5.1	Guaranteed Maximum Price; Savings	30
5.1.1	General.....	30
5.1.2	Payment.....	30
5.1.3	Savings.....	30
5.1.4	Incentive Fee	30
5.2	Schedule of Values	32
5.3	Applications for Payment.....	32
5.4	Amount of Progress Payments.....	32
5.5	Retainage	33
5.6	Early Release of Subcontractor Retainage	33
5.7	Payment for On-Site and Off-Site Stored Materials	33
5.8	Title to Construction Work.....	33
5.9	Withholding of Payment.....	34
5.10	Failure of Payment; Interest	34
5.11	Substantial Completion	34
5.12	Partial Occupancy or Use.....	35
5.13	Final Completion and Final Payment	35
5.13.1	Final Completion of a Building	35
5.13.2	Conditions Precedent to Final Payment on Account of a Building	36
5.13.3	Delay in Final Completion.....	36
5.13.4	Waiver of Claims at Final Payment	36
5.14	Allowances	36
5.15	Superintendent	37
5.17	Contingency	37
ARTICLE 6	CHANGES IN THE WORK; CLAIMS	38
6.1	Changes	38
6.2	Change Directives	38
6.3	Change Proposals.....	39
6.4	Claims.....	39
6.5	Payment on Account of Change Orders and/or Excusable Delays	39
6.5.1	Construction Work, Rehabilitation Work, Landscaping Work	39

6.5.2	Design Work	40
6.5.3	Decreased Scope	40
6.6	Changes on Account of Delay in Commencement of Work.....	41
6.7	No Inflation Escalation	41
6.8	Time Extensions on Account of Change Orders	41
ARTICLE 7	TRANSFER OF CARE, CUSTODY AND CONTROL.....	41
7.1	Care, Custody and Control by Design/Builder During Construction.....	41
7.2	Substantial Completion; Partial Occupancy or Use.....	41
ARTICLE 8	TEAM SUBCONTRACTORS AND SUBCONTRACTORS	41
8.1	Team Subcontractors.....	42
8.2	Subcontracts	42
8.2.1	Incorporation of Contract Documents	42
8.2.2	Assignment of Subcontracts	42
8.3	Self-Performed Work	42
8.4	Subcontractor Bids	43
ARTICLE 9	INSURANCE AND BONDS; INDEMNIFICATION	43
9.1	Insurance to be Provided by the Design/Builder	43
9.2	Insurance to be Provided by the Company	43
9.3	Payment and Performance Bonds	43
9.4	Indemnification	44
9.4.1	Indemnification by Design/Builder.....	44
9.4.2	Indemnification by Company	45
9.4.3	The Company's Property	45
9.5	Company Agreement	45
ARTICLE 10	PROTECTION OF PERSONS AND PROPERTY	46
10.1	Safety Precautions and Programs	46
10.1.1	Site Safety	46
10.1.2	Notices	46
10.2	Safety of Persons and Property	46
10.2.1	Reasonable Precautions	46
10.2.2	Safeguards.....	46
10.2.3	Use of Explosives	46
10.2.4	Remedy of Damage.....	46
10.2.5	Designation of Safety Coordinator	47
10.2.6	Loads.....	47
10.3	Security	47
10.4	Damage to Property at the Sites	47
10.5	Damage to Property of Others.....	47
10.6	Failure of Design/Builder to Repair Damage	47
10.7	Emergencies	48
ARTICLE 11	DISPUTES	48
11.1	Disputes between Company and Design/Builder	48

11.2 Dispute Resolution Procedures	48
11.2.1 Initial Meeting to Resolve Disputes.....	48
11.2.2 Mediation	48
11.2.3 Arbitration.....	49
ARTICLE 12 EVENTS OF DEFAULT AND REMEDIES; TERMINATION	49
12.1 Design/Builder Events of Default	49
12.2 Remedies of the Company upon a Design/Builder Event of Default	50
12.2.1 Termination of Agreement.....	50
12.3 Company Events of Default	51
12.4 Remedies of the Design/Builder upon a Company Event of Default.....	51
12.5 Representations and Remedies	51
12.6 Termination or Suspension for Convenience	52
12.6.1 Termination for Convenience	52
12.6.2 Suspension for Convenience.....	52
ARTICLE 13 MISCELLANEOUS PROVISIONS.....	52
13.1 Governing Law.....	52
13.2 Successors and Assigns.....	52
13.3 Written Notice	52
13.4 Commencement of Statutory Limitation Period and Statute of Repose Period56	56
13.4.1 Before Substantial Completion	56
13.4.2 Between Substantial Completion and Final Completion.....	56
13.4.3 After Final Completion	56
13.4.4 Statute of Repose	56
13.5 Modifications.....	56
13.6 Interpretation	56
13.7 Severability	57
13.8 Whole Agreement.....	57
13.9 Accounting Records.....	57
13.10 Limitation of Liability	57
13.11 Audit and Records	58
13.11.1 General	58
13.11.2 Examination of Costs.....	58
13.11.3 Cost or Pricing Data.....	58
13.11.4 Access	58
13.11.5 No Required Creation of Records.....	59

LIST OF EXHIBITS

Exhibit A	-	Scope of Work
Exhibit B	-	Construction Allowance Items
Exhibit C	-	List of Contract Documents
Exhibit D	-	Cost of the Work
Exhibit E	-	Guaranteed Maximum Price and Fee
Appendix E-1	-	Breakdown of Site Investigation and Discovery
Exhibit F	-	Governmental Approvals
Exhibit G	-	Project Phases
Exhibit H	-	Schedule
Exhibit I-1	-	San Luis Rey Site Description
Exhibit I-2	-	San Mateo Point Site Description
Exhibit J	-	Procedures for Review of Design Materials
Exhibit K	-	Authorized Representatives
Exhibit L	-	Insurance Requirements
Exhibit M	-	Design Group Members
Exhibit N-1	-	Form of Contractor Payment Bond and Performance Bond
Exhibit N-2	-	Form of Subcontractor Bonds
Exhibit O	-	Design/Build Audits
Exhibit P	-	Davis Bacon Compliance
Appendix P-1	-	Davis Bacon Wage Determination
Exhibit Q-1	-	Guaranteed Maximum Price and Fee for Option 1
Exhibit Q-2	-	Guaranteed Maximum Price and Fee for Option 2
Exhibit R-1	-	Incentive Fee for Option 1
Exhibit R-2	-	Design/Build Audits (San Mateo Point – Option 1)
Exhibit R-3	-	Incentive Fee for Option 2
Exhibit R-4	-	Design/Build Audits (San Mateo Point – Option 2)
Exhibit S	-	Schedule for Option 1 or Option 2